REPORT

OF THE

ATTORNEY-GENERAL,

SUBMITTED

TO THE GOVERNOR UNDER THE ACT OF JULY 23, 1845.

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REPORT OF THE ATTORNEY-GENERAL.

ATTORNEY-GENERAL'S OFFICE,
Tallahassee, Fla., December 31, 1880.

His Excellency Geo. F. Drew, Governor of Florida:

SIR:' I am required by law to make a report to you as to the effect and operation of the acts of the last session of the Legislature, the decisions of the courts thereon and referring to previous legislation; with such suggestions as, in my opinion, the public interest may demand.

ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

The act of Congress (Section 135, Revised Statutes of the United States), provides that "the Electors of President and Vice-President for each State shall meet and give their votes upon the *first Wednesday in December* in the year in which they are appointed, at such place in each State as the Legislature of such State shall direct."

By the act of 1872, (Chapter 1868, Laws of Florida,) it is provided that "on the *thirty-fifth* day after the holding of any general or special election for any State officer, member of the Legislature or Representative in Congress, or *sooner if* the returns shall have been received from the several counties wherein elections shall have been held, the Secretary of State, Attorney-General and Comptroller of Public Accounts * * * shall meet at the office of the Secretary of State, pursuant to notice to be given by the Secretary of State, and form a Board of State Canvassers, and proceed to canvass the returns of said election, and determine and declare who shall have been elected to any such office, or as such member, as shown by such returns."

Construing this act (Chapter 1868), as governing the canvass of election returns, in so far as they represent votes cast for Electors of President and Vice-President, (and such has been the practical construction given it,) it should be observed that it is at least questionable that it contemplates that any canvass of the returns shall be made before the thirty-fifth day after the election, if the election returns from the several counties have not been received, and that it is possible that the first Wednesday in December, on which the Presidential Electors are to meet and cast their votes under the act of Congress, may fall *within* this period of thirty-five days, and the returns from the several counties have still not been received. This

conjuncture arose the present year. The election was held on the second day of November. The "*first Wednesday* in December" was the *first day* of December, and was consequently only the *twenty-ninth day* after the election, but the returns from Dade county had not been received by either your Excellency or the Secretary of State; nor were they received until the fifth day of December. The gentlemen who were known to have been elected as such Electors had assembled at the Capitol on "the first Wednesday." The Board of State Canvassers had assembled and opened the returns from the other counties in the State. The vote of Dade county, it was known, could not change the result of the election, and the question whether the Board should proceed to declare the result from the returns before it, or decline to do so until the Dade return was received, presented itself. Believing that the will of the people should not be thus defeated, and knowing that no injury to any person could ensue therefrom, the Board determined to declare the result from the returns before it, and did so; not, however, without waiting until after the arrival, on Wednesday, the first day of December, of the mail, by which the Dade county return would have come had it arrived that day. Upon this canvass your Excellency issued certificates of election, "on the first Wednesday," to the Hons. Thomas F. King, Albert J. Russell, Samuel Pasco and James E. Yonge as such Electors, and they met and voted for President and Vice-President on that day. The members of the Board were not unmindful in taking this course that it will be in the power of Congress to pass upon its correctness and determine its effect upon the validity of the votes of such Electors when the returns from the several States shall be opened by the President of the Senate to be counted.

It may be, however improbable, that the vote of Florida will again at some time be decisive of the Presidential election as it was in the year 1876, but even if it should never be, the law should not remain in its present defective condition. I suggest that it be provided that the canvass of the vote for Electors of President and Vice-President shall be concluded and the result declared by the State Board on the day preceding the first Wednesday in December. This much, at least, should be done.

REGISTRATION AND ELECTIONS.

Section 7 of the act of 1877 (Chapter 3021, Laws of Florida,) provides that "should the name of any person, who has been duly registered according to the requirements of this act, not appear on the registration list of the election district in which he resides, and he shall, on offering to vote," make on oath the statement therein required as to his age, "and that he was duly registered at least ten days before the election," and as to residence, and shall also produce "two qualified electors of the election district in which he offers to vote, who shall be personally known to at least two of the inspectors, and who shall each declare, under oath, that such person does live in the election district in which he offers to vote, and has resided in Florida one year, and in the county six months next preceding the election," that thereupon the vote of such person shall be received.

In the case of Scott vs. The Board of County Commissioners of Jefferson County, decided at the June Term (A. D. 1880) of our Supreme Court, two of the Justices concurred in the opinion that "so far as this section proposes to organize a court to try a person's right to vote, composed of members, *not judicial officers*, who are *personally* acquainted with the witnesses, giving the applicant no means of obtaining witnesses, or of compelling the inspectors to acknowledge their personal acquaintance with the witnesses, and, in effect, giving the inspectors a discretion to receive or reject his vote, as they may be inclined, to this extent the last paragraph of the section is *void*. If one has been registered and is a voter, and has not lost his qualifications as such voter by his own act, the *erasure or omission of his name from the list will not affect his right;* and on taking the oath that he was duly registered, and has the legal qualifications to entitle him to vote, his vote must be received without subjecting him to the ordeal of a trial by a court, the members of which are by this law to decide the case upon their own knowledge and in their discretion. Such a tribunal is *not recognized, but prohibited by the fundamental law.*" As I understand this language, it means simply that the omission or neglect to put upon a *district* registration list, made up by the clerk for use by the inspectors, the name of a duly qualified voter, who has actually and lawfully been registered, cannot be taken to deprive such person of his right to vote, which right, actual registration, he being otherwise qualified, was the last step necessary to the exercise of; and that no tribunal, except one of a judicial character, and authorized by our constitution, can, by its judgment, deprive him of this right. The constitution has distributed the judicial power of the State among the Supreme, the Circuit, County, Justices of the Peace and Municipal Courts, and then provided, by Section 18 of Article VI., (Judicial Department,) as follows: "No other courts than those herein specified shall be organized in this State."

The same Justices also expressed the opinion that the striking off by the county commissioners, when revising the lists, of the name of a person once registered and having had a *right* to vote, does not impair his *right* to vote.

They also expressed the opinion that a person, whose name has been improperly stricken off by the county commissioners, may and should, upon application duly made, if he possesses the requisite qualifications, be registered again by the district registration officer of the district in which he resides; that the provision as to restoration by the clerk upon the certificate of the county commissioners is not "the only method by which the name of a person, improperly struck from the registration list, may be again registered."

They also, in speaking of that portion of Section 2 of the Act of 1877, which says that "under no circumstances shall any such deputy clerk or registration officer register any person who fails to *show satisfactorily, under oath*, if deemed necessary, (administered by such deputy clerk or registration officer,) that he resides in the election district in which he seeks to be registered; that he is twenty-one years of age," and that he is a citizen and resident, &c., express the opinion that this language is not to be construed to confer upon the registration officer any *discretion* or *judicial power* to *determine* the right; that if a man offers to make oath to his qualifications the oath should be administered, and if he swears that he possesses the necessary qualification and residence, the duty of the officer is to register his name; he cannot say that he is not satisfied with the evidence, and reject it, for that involves *judicial* action. If the man is not entitled to vote he may be punished for illegally voting by a tribunal qualified to ascertain and adjudicate the law and facts. The registration officer *is not such a tribunal.*

While the right of the *bona fide* elector to vote should be trammelled as little as possible, I think that the registration lists should be carefully guarded against imposition and fraud, and I believe that the privilege of registering should be confined to a limited period in each year, and do not see why the Clerks of the Circuit Court should be permitted to register persons at all times prior to the ten days preceding an election, as is the *practice* in some counties now. By confining it to a limited period, it will become a matter of more special notice, and unlawful attempts at it will be deterred in a great degree by the special attention which will be given the matter by those who usually interest themselves in elections.

The election law of 1877 (Chapter 3021) is one which has received various and conflicting constructions from sources of political sympathy. It cannot be called a plain and perspicuous law. It should be revised and made plainer in its provisions as to the duties and powers of the several officers.

PETIT LARCENY AS A DISQUALIFICATION TO VOTE.

Within the last six months the question whether or not a conviction of petit larceny, or any larceny not punishable by imprisonment in the State prison, renders the convict disqualified to vote, has arisen. While it is clear, and is almost universally admitted, that it does have this effect; yet, as some at least pretend to think differently, and, at least for political purposes, stimulate such criminals to attempts at violating the plain meaning of the election laws on this point, it had probably better be more expressly declared.

BOARD OF STATE CANVASSERS.

Section 2 of chapter 1868, approved February 27, 1872, which prescribes the powers and duties of the Board of State Canvassers, should either be entirely superseded or such additional legislation be had as will supply the board with the additional machinery necessary to a satisfactory exercise and performance of such powers and duties. This section received a partial construction from the Supreme Court in the case of The State *ex rel.* Geo. F. Drew vs. Board of State Canvassers, (16 Fla., 17.) The clear effect of that decision is that the board can go outside of a county return to ascertain whether it represents the true vote cast in the county from which it comes, or whether it is a fraudulent return; and the court says that "where a return is so irregular, false or fraudulent that the board is unable to determine the actual vote cast, as distinct from the legal vote," the return should be rejected. Though there is no room for doubt as to the meaning of the statute as construed by the court, in so far as the power and duty of the board to ascertain the false and fraudulent character of a return, yet the Legislature has failed to provide the machinery for summoning witnesses and compelling their attendance and subjecting them to examination against their wills. Unless provision is made for this, there can be no satisfactory performance of the duties imposed by the statute. I do not mean to say, however, that such satisfaction can be given even with this provision. I doubt the advisability of a board which has no power to inquire into the legality of votes, and finally settle the question as to who is elected, having the powers conferred by this statute.

In most States the only power given to such boards, in so far as ascertaining any question by resorting to means outside of the return, is the implied power of determining whether or not the papers before them, purporting to be returns which they are to canvass, are in fact genuine. It is true that there are many objections to this system, as is known to any one having any correct idea of the injustice that has frequently resulted, and may result, from the absence of greater power, still I believe it would be wise to return to this system, which obtained in Flor-

ida prior to 1872. By doing this, and requiring a preservation of ballots, and leaving it to the courts to act upon precinct inspectors and county canvassers, in any case in which the one shall not have counted according to the ballots, or the other according to the precinct returns, every right can be secured which it is possible to secure before tribunals having no power to pass upon the legality of a vote, which power, the Supreme Court says, cannot be given to this board under our Constitution.

In the canvass made by the State Board of the returns of the election of 1878 the return from Madison county was thrown out and not counted. This action of the State Board was, as stated in my last report, based upon the decision in the case of the State *ex rel.* Geo. F. Drew *vs.* Board of State Canvassers. The facts were that the county return was the aggregation of all the precinct returns which were before the county board when it made the county canvass, but no return had reached or ever did reach the county board from one precinct in the county. The action of the county board was regular. The Supreme Court in the above case had said: "The words *true vote* indicate the votes *actually cast* as distinguished from the *legal vote*"; and that if upon "inquiry they (the State Board) be satisfied that the return does not show the vote actually cast at the election, but states a falsehood as to that, they may lay it aside and refuse to count the return as is provided in the act of 1872." The Justices of the Court divided in opinion, in the case brought to test the correctness of the Board's action as to the Madison return, two of them holding that this county return "being genuine, regular and strictly legal in all respects, and required to be made for the purposes of the State canvass and *including only votes actually cast*, it could not be condemned as *false*, but was a return expressly required by law to be counted." Justice Westcott, who had delivered the opinion of the Court in the Drew case, dissented and held the return to be *false* within the meaning of the statute, as it did not represent the entire vote actually cast in the county, and that the action of the board was legal. The State Board, after this decision, reassembled and included the county return in their canvass. Without saying anything as to the comparative correctness of the different views taken by members of the Court, I will venture to assert that a careful reading of the opinions and frank consideration of the practical workings of the section, will convince almost any one that it should be repealed and the old system returned to.

FOREIGN INSURANCE COMPANIES.

The act of January 27, 1871, entitled "an act to provide for the protection of citizens of this State against defaulting foreign corporations," (chapter 1839) provided that no corporation or company organized or incorporated under the laws of any other State or Territory or foreign country should keep any office or agency within this State for the purpose of effecting any fire marine or life insurance, nor should any person act as its agent for the purpose of effecting any such insurance within the State after the first day of July, 1871, unless such company or agent should, before issuing any policy or entering into any contract of insurance, deposit with the Treasurer of this State the bonds of the State to the amount of thirty thousand dollars. The same act made provision for the withdrawal by any company or corporation of bonds so deposited. The purpose of such law in requiring the deposit of the bonds was to secure the policy holders. In 1872 the Legislature passed an act approved February 27, and entitled "An Act relating to insurance companies," (chapter 1863). It makes it unlawful for any agent or agents, of any insurance company incorporated by any other State than the State of Florida, * * * or their agents, directly or indirectly to transact any business of insurance without such company has first obtained a certificate of authority from the State Treasurer; and before obtaining such certificate such insurance company is required to furnish the State Treasurer, under the oath of the President or Vice-President and Secretary of the company, showing the name and locality of the company and its financial condition; and to file an agreement on the part of the company, that service of process in any civil action against the company may be made upon any agent of the company in this State, and authorizing such agent to admit service. Section 2 of this act provides that "no insurance company, agent or agents thereof, shall transact any business in this State, unless such company is possessed of at least $150,000 in value invested in United States or State bonds or other bankable interest bearing stocks of the United States at their market value," and that "upon complying with the preceding section, and upon furnishing evidence to the satisfaction of the Board of Insurance Commissioners (State Treasurer, Comptroller and Attorney-General) hereinafter provided for, that such company has actually invested the amount above stated in such securities as hereinbefore mentioned, the State Treasurer shall issue a certificate thereof *with authority to such company to transact the business of insurance in this State.*" There is to this section a *proviso* that *life* insurance companies organized under the laws of any other State shall *be entitled to*

such certificate of authority by furnishing evidence to the satisfaction of the State Treasurer that such company is possessed of and has actually invested $100,000 in United States or State bonds or other bankable interest bearing stocks of the United States at their market value or in mortgage on unincumbered real estate worth double the amount loaned thereon, inclusive of buildings thereon. The statute also provides for annual renewals of the statement and certificates of authority.

When the present Administration came in the only companies which had ever complied with the requirements of the act of 1871 (Chapter 1,839) had withdrawn their bonds, and since the passage of the act of 1872 (Chapter 1,863) it has not been necessary to the procurement of the certificate of authority to do more than comply with the requirements of the latter act, which requires no deposit of bonds to be made.

The Piedmont and Arlington Life Insurance Company, which had previous to the year A. D. 1877 withdrawn its deposit and begun business under the provisions of the act of 1872, has lately failed, and policy holders residing in our State may be losers. It has in its statements complied with the act of 1872. Since its failure application has been made for information as to whether this company had any bonds on deposit, under the act of 1871. I think it proper to bring to the notice of the Legislature through you the existing condition of the law on this subject, so that the representatives of the people may, if they think proper, take action in the premises for securing our people against future loss. The Supreme Court of the United States in the case of Paul vs. Virginia (8 Wallace, 168) held that a statute requiring such deposit by insurance companies of other States is not in conflict with that clause of the Constitution of the United States which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," nor with the clause which declares that Congress shall have power "to regulate commerce with foreign nations and among the several States."

COMPENSATION OF STATE ATTORNEYS.

There is just dissatisfaction with the present system of paying State attorneys. It would be wiser and more just to pay them a small salary sufficient to cover fully all travelling expenses, and then to pay a reasonable fee for all convictions, both in cases of felony and misdemeanors. In civil cases I do not think that they should be dependent upon the actual collection of money for compensation for services. A reasonable fee for filing declaration and obtaining judgment should be paid in all cases, and in addition a per centage on the amount realized. It sometimes happens that most meritorious services are rendered without success in realizing money for the State.

REPORTING SUPREME COURT DECISIONS.

Section 4 of Chapter 1,137, approved February 8, 1861, entitled "An Act Concerning the Office of the Clerk of the Supreme Court of this State," provides "that it shall be the duty of the said Clerk to furnish the Attorney General of the State certified copies of *all records, papers, opinions and decisions* of said Court in each and every year, within a reasonable time after its adjournment." I recommend that this law be amended so as to require the Clerk to furnish the Attorney General, within a reasonable time after the adjournment of any term of the Court, copies of the head notes, opinions, briefs and statements of cases made by the justices, and to furnish copies of such other papers and records only as and when the Attorney General may call for them. Under the present law much expense has been uselessly incurred for copies of papers and records which were not needed. The change suggested will, I believe, result in a considerable saving to the State.

FLORIDA REPORTS AND STATUTES FOR THE ATTORNEY GENERAL'S OFFICE.

On coming into this office in 1877 I found no statutes of the State and no reports except the Fourteenth and Fifteenth Volumes. I have now belonging to this office the Statutes of 1877 and 1879, and Volumes 14, 15, 16 and the first part of Volume 17, and will soon have the Seventeenth Volume complete. I respectfully request that the Clerk of the Supreme Court be authorized to deliver to this office a bound copy of each volume of reports which may be in his possession, and which this office may not have, and that I be authorized to purchase a full set of statutes for the office.

JUSTICES OF THE PEACE.

I recommend that Justices of the Peace be given jurisdiction to try all cases of larceny (not charged as a second offence) where the value of the property stolen does not exceed twenty dollars, and all cases of carrying arms secretly.

They have (Acts 1877, Chapter 2093,) jurisdiction of all cases of larceny (not charged as a second offence) where the value of the property stolen does not exceed five dollars. I see no good reason why, if they can be entrusted with their present jurisdiction as to larceny, they should not have it of all larcenies which are misdemeanors. The statute does not make difference of values falling below twenty dollars a test of punishment; nor is it easy to perceive the necessity for greater capacity to

try a larceny case when the value is twenty dollars than when it is five dollars. No serious complaint against the act of 1877 (Chapter 2093) which gives them their present trial jurisdiction has reached my ears.

The incapacity of Justices of the Peace is, and from all I can learn has long been, no more in Florida than in other States a matter of some comment. But whatever may be said of them no one has been wise enough to suggest any substitute which has proved acceptable, and we must make the most of them for the present at least. They are generally appointed upon the recommendation of the best citizens, who certify to the capacity and suitableness of the proposed appointee, and the necessity for the appointment. If the people will always confine their recommendations to persons of good common sense and ordinary intelligence and integrity, I can see no reason why the administration of justice under the increased jurisdiction should not be even more satisfactory than it has been under the present law. If the people of each county would see also that the number recommended is not beyond the requirements of society, more men of good capacity would be willing to accept the position, and a great improvement would result.

There is no demand for a repeal of the act of 1877 (Chapter 2093), and from all I have heard it may be deemed a successful experiment. By giving the increased jurisdiction proposed, more prompt trial of the offences named will be secured, and the expenses of the Circuit Courts reduced very much, and a considerable saving result both to the State and the counties.

RECOGNIZANCE OF WITNESSES IN CRIMINAL CASES BY JUSTICES OF THE PEACE.

The provision of Chapter 2094, (approved March 1, 1877,) which requires Justices of the Peace to take bond or recognizance of all witnesses in criminal cases examined before them, whose evidence is deemed material in behalf of the State, to appear on the second day of the term of the court to which the criminal is bound or committed, has both expedited the business of the grand juries very much and saved costs. The neglect of some Justices to carry out this provision has demonstrated very forcibly the wisdom of the law. I respectfully suggest that it would be well for the Legislature to impose a penalty upon Justices for any unreasonable neglect of this important duty, and would further suggest that this law should be so amended as to provide that witnesses shall be recognized to appear on the first day of the term, instead of the second day. From the best information obtained, I am confident this would be a wise amendment, and that the business of the Circuit Courts would be thereby expedited.

TAX ON TELEGRAPH LINES.

Under our Constitution all property is taxable according to and upon its value. Telegraph lines should not be exempted from this rule. They should no more be taxed "per mile" than the house of one man should be taxed according to its square or cubic measurement, while that of another is taxed according to and upon its value. The act of 1873 (Chapter 1945) as amended (or proposed to be amended) by the act of 1879, (Chapter 3109) is a palpable evasion of the Constitution, and one in which no detriment results to the owners of the lines, but loss is sustained by the State and injustice done to other tax-payers.

With sentiments of high regard, I have the honor to be, very respectfully,

GEO. P. RANEY,
Attorney-General.